

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Gina Miceli

Plaintiff,

VS.

Citigroup, Inc.; *et al.*,

Defendants.

Case No.: 2:15-cv-1962-GMN-VCF

## ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 15), filed by Defendants Citigroup, Inc. and Jeffrey Dunmire (“Defendants”). Plaintiff Gina Miceli (“Plaintiff”) filed a response, (ECF No. 20), and Defendants replied, (ECF No. 24). For the reasons set forth herein, the Motion to Dismiss will be **GRANTED**.

## I. BACKGROUND

This case arises out of allegations that Defendant Citigroup, as Plaintiff's employer, discriminated against Plaintiff due to her age and gender. (Compl., ECF No. 1). Plaintiff began her employment in or around 1993 as a banking professional with California Federal Bank, which was acquired by Defendant Citigroup in 2003. (*Id.* ¶ 17); (Pl's Resp. 4:15-5:1, ECF No. 20). After the acquisition, Plaintiff worked for Defendant Citigroup as a branch manager until her termination on May 5, 2014. (Compl., ¶ 19). In her Complaint, Plaintiff argues that, despite Defendant Citigroup's claim that she was terminated due to an ethical violation, her termination actually resulted from the desire of Defendant Citigroup and Defendant Dunmire, Plaintiff's supervisor, to eliminate women and individuals over forty from the leadership of her branch. (*Id.* ¶¶ 53-54).

1 Based on these allegations, the Complaint sets forth claims for: (1) gender  
2 discrimination in violation of Title VII, (2) tortious discharge, (3) defamation, (4) intentional  
3 infliction of emotional distress, and (5) age discrimination in violation of the Age  
4 Discrimination in Employment Act of 1967. (*Id.* ¶¶ 63-126).

5 In the instant Motion, Defendants argue that the Court should dismiss this action based  
6 upon an arbitration policy detailed within Defendant Citigroup's employee handbook.  
7 Defendants claim that Plaintiff received a web link to Defendant Citigroup's Employee  
8 Handbook in December 2012 and electronically signed an acknowledgement receipt which set  
9 forth the general terms of the arbitration policy. (2013 U.S. Employee Handbook  
10 Acknowledgment Receipt, Ex. A-1 to Mot. to Dismiss, ECF No. 15). This acknowledgement  
11 receipt stated:

12 When you click on the "I Acknowledge" button below, you are  
13 acknowledging that:

14 You have opened the e-mail that directed you to this Web site.

15 You have received the Web link to the Employee Handbook.

16 You understand that it's your obligation to read the Handbook and  
17 become familiar with its terms.

18 Appended to the Handbook is an Employment Arbitration Policy as  
19 well as the "Principles of Employment" that require you and Citi to  
20 submit employment-related disputes to binding arbitration (See  
21 Appendix A and Appendix D). You understand that it is your  
22 obligation to read these document carefully, and that no provision  
23 in this Handbook or elsewhere is intended to constitute a waiver,  
24 nor be construed to constitute a waiver, of your or Citi's right to  
25 compel arbitration of employment-related disputes.

23 WITH THE EXCEPTION OF THE EMPLOYMENT  
24 ARBITRATION POLICY, YOU UNDERSTAND THAT  
25 NOTHING CONTAINED IN THIS HANDBOOK, NOR THE  
HANDBOOK ITSELF, IS CONSIDERED A CONTRACT OF  
EMPLOYMENT. IN ADDITION, NOTHING IN THIS

1 HANDBOOK CONSTITUTES A GUARANTEE THAT YOUR  
2 EMPLOYMENT WILL CONTINUE FOR ANY SPECIFIED  
3 PERIOD OF TIME. YOU UNDERSTAND THAT YOUR  
4 EMPLOYMENT WITH CITI IS AT-WILL, WHICH MEANS IT  
5 CAN BE TERMINATED BY YOU OR CITI AT ANY TIME,  
6 WITH OR WITHOUT NOTICE, FOR NO REASON OR ANY  
7 REASON NOT OTHERWISE PROHIBITED BY LAW.

8 (*Id.*). Plaintiff does not dispute that the acknowledgement receipt bears her electronic signature  
9 and is dated December 5, 2012. (*Id.*). The arbitration policy is fully detailed within Defendant  
10 Citigroup's 2013 employee handbook and provides, in relevant part:

11 This Policy applies to both you and to Citi, and makes arbitration  
12 the required and exclusive forum for the resolution of all  
13 employment-related disputes (other than disputes which by statute  
14 are not subject to arbitration). . . .

15 Neutral arbitrator(s) shall be appointed in the manner provided by  
16 AAA or FINRA rules, as applicable. However, it's Citi's intent that  
17 arbitrators be diverse, experienced, and knowledgeable about  
18 employment-related claims. . . .

19 Discovery requests shall be made pursuant to the rules of the AAA  
20 or FINRA, as applicable. Upon request of a party, the arbitrator(s)  
21 may order further discovery consistent with the applicable rules and  
22 the expedited nature of arbitration. . . .

23 The arbitrator(s) shall be governed by applicable federal, state,  
24 and/or local law. The arbitrator(s) may award relief only on an  
25 individual basis. The arbitrator(s) shall have the authority to award  
compensatory damages and injunctive relief to the extent permitted  
by applicable law. The arbitrator(s) may award punitive or  
exemplary damages or attorneys' fees where expressly provided by  
applicable law.

(2013 U.S. Employee Handbook pp. 54-56, Ex. A-2 to Mot. to Dismiss, ECF No. 15). Because  
of this arbitration policy, Defendants assert that this case should be dismissed pending  
arbitration, pursuant to the Federal Arbitration Act.

## 1 **II. LEGAL STANDARD**

2 Section 2 of the Federal Arbitration Act (the “FAA”) provides that:

3 A written provision in . . . a contract evidencing a transaction  
 4 involving commerce to settle by arbitration a controversy thereafter  
 5 arising out of such contract or transaction . . . shall be valid,  
 6 irrevocable, and enforceable, save upon such grounds as exist at law  
 7 or in equity for the revocation of any contract.

8 9 U.S.C. § 2. “In enacting § 2 of the [FAA], Congress declared a national policy favoring  
 9 arbitration and withdrew the power of the states to require a judicial forum for the resolution of  
 10 claims which the contracting parties agreed to resolve by arbitration.” *Southland Corp. v.*  
 11 *Keating*, 465 U.S. 1, 10 (1984). Courts place arbitration agreements “upon the same footing as  
 12 other contracts.” *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489  
 13 U.S. 468, 478 (1989).

14 Under the FAA, parties to an arbitration agreement may seek an order from the Court to  
 15 compel arbitration. 9 U.S.C. § 4. The FAA “leaves no place for the exercise of discretion by a  
 16 district court, but instead mandates that district courts *shall* direct the parties to proceed to  
 17 arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter*  
 18 *Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Thus, the Court’s “role under the [FAA] is . .  
 19 . limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2)  
 20 whether the agreement encompasses the dispute at issue.” *Lee v. Intelius, Inc.*, 737 F.3d 1254,  
 21 1261 (9th Cir. 2013). If a district court decides that an arbitration agreement is valid and  
 22 enforceable, then it should either stay or dismiss the claims subject to arbitration. *Nagrampa v.*  
 23 *MailCoups, Inc.*, 469 F.3d 1257, 1276-77 (9th Cir. 2006).

## 24 **III. DISCUSSION**

25 In her Response, Plaintiff argues that the arbitration policy is unconscionable, and  
 therefore invalid, because it was presented to Plaintiff nearly twenty years after she began her  
 employment.

1 Nevada possesses a strong public policy in favor of arbitration, and arbitration clauses  
2 are generally enforceable. *Gonski v. Second Judicial Dist. Court of State ex rel. Washoe*, 245  
3 P.3d 1164, 1168 (Nev. 2010). “Nevertheless, courts may invalidate unconscionable arbitration  
4 provisions.” *D.R. Horton, Inc. v. Green*, 96 P.3d 1159, 1162 (Nev. 2004); *see also Burch v.*  
5 *Second Judicial Dist. Court of State ex rel. Washoe*, 49 P.3d 647, 650 (Nev. 2002).

6 “Generally, both procedural and substantive unconscionability must be present in order  
7 for a court to exercise its discretion to refuse to enforce a clause as unconscionable.” *D.R.*  
8 *Horton*, 96 P.3d at 1162 (citing *Burch*, 49 P.3d at 650). Accordingly, in assessing Plaintiff’s  
9 arguments regarding the invalidity of the arbitration policy, the Court will first determine  
10 whether the policy is procedurally unconscionable, and will then look to whether it is  
11 substantively unconscionable.

#### 12 **A. Procedural Unconscionability**

13 “An arbitration clause is procedurally unconscionable when a party has no meaningful  
14 opportunity to agree to the clause terms either because of unequal bargaining power, as in an  
15 adhesion contract, or because the clause and its effects are not readily ascertainable upon a  
16 review of the contract.” *Gonski*, 245 P.3d at 1169. “Procedural unconscionability often  
17 involves the use of fine print or complicated, incomplete or misleading language that fails to  
18 inform a reasonable person of the contractual language’s consequences.” *D.R. Horton*, 96 P.3d  
19 at 1162. In this case, it is apparent that the arbitration policy is not procedurally  
20 unconscionable. Rather than being buried within Defendant Citigroup’s employee handbook or  
21 presented in fine print, the general terms of the arbitration policy were made clear in the text of  
22 the one-page acknowledgement receipt signed by Plaintiff. This document states: “Appended  
23 to the Handbook is an Employment Arbitration Policy as well as the ‘Principles of  
24 Employment’ that require you and Citi to submit employment-related disputes to binding  
25 arbitration (See Appendix A and Appendix D).” (2013 U.S. Employee Handbook

1 Acknowledgment Receipt, Ex. A-1 to Mot. to Dismiss, ECF No. 15). Notably, this statement  
2 also referenced the sections of the employee handbook containing the full text of the arbitration  
3 policy, “Appendix A and Appendix D,” giving a clear indication as to where Plaintiff needed to  
4 look if she wanted to learn more. Additionally, by signing this document, Plaintiff  
5 acknowledged that she was obligated “to read the Handbook and become familiar with its  
6 terms,” (*id.*), which included the arbitration policy. *See* (2013 U.S. Employee Handbook pp.  
7 53-56, Ex. A-2 to Mot. to Dismiss, ECF No. 15). Therefore, the Court finds that the arbitration  
8 requirement was presented clearly and the terms of the arbitration policy were accessible to  
9 Plaintiff at the time she signed the acknowledgement receipt.

10 Plaintiff also argues that the arbitration policy is procedurally unconscionable because it  
11 was presented to her on a take-it-or-leave-it basis. However, “[t]he Nevada Supreme Court has  
12 held that adhesion-contract analysis is inapplicable in the employment context.” *Hillgen-Ruiz v.*  
13 *TLC Casino Enterprises, Inc.*, No. 2:14-cv-0437-APG-VCF, 2014 WL 5341676, at \*6 (D. Nev.  
14 Oct. 20, 2014). Indeed, in *Kindred v. Second Judicial Dist. Court ex rel. County of Washoe*, the  
15 Nevada Supreme Court stated: “An adhesion contract is a standardized contract form offered to  
16 consumers of goods and services essentially on a take it or leave it basis, without affording the  
17 consumer a realistic opportunity to bargain. We have never applied the adhesion contract  
18 doctrine to employment cases.” 996 P.2d 903, 907 (Nev. 2000). Therefore, pursuant to the  
19 Nevada Supreme Court’s holding in *Kindred*, Plaintiff’s argument regarding the disparity in  
20 bargaining power between herself and Defendant Citigroup is unavailing. Thus, the Court finds  
21 that Plaintiff has failed to demonstrate that the arbitration policy at issue is procedurally  
22 unconscionable.

### 23 **B. Substantive Unconscionability**

24 “Substantive unconscionability . . . is based on the one-sidedness of the arbitration  
25 terms” and whether those terms are “oppressive.” *D.R. Horton*, 96 P.3d at 1162-63. In this

1 case, Plaintiff argues that the arbitration policy is substantively unconscionable because it could  
2 be interpreted to apply retroactively to the date she began her employment. However,  
3 assuming *arguendo* that the policy would apply retroactively, it nevertheless imposes the  
4 arbitration requirement equally upon Defendant Citigroup and Plaintiff. The policy states:

5 This Policy applies to both you and to Citi, and makes arbitration  
6 the required and exclusive forum for the resolution of all  
7 employment-related disputes (other than disputes which by statute  
8 are not subject to arbitration) which are based on legally protected  
9 rights (i.e., statutory, regulatory, contractual, or common-law  
10 rights) and arise between you and Citi, its predecessors, successors  
and assigns, its current and former parents, subsidiaries, and  
affiliates, and its and their current and former officers, directors,  
employees, and agents.

11 (2013 U.S. Employee Handbook pp. 53-56, Ex. A-2 to Mot. to Dismiss, ECF No. 15).

12 Therefore, even if the policy were construed to require that pre-existing claims be submitted to  
13 arbitration, this requirement would equally bind Defendant Citigroup and Plaintiff, and thus  
14 would not be substantively unconscionable. Accordingly, the Court finds that Plaintiff has  
15 failed to show that the agreement at issue is either procedurally or substantively  
16 unconscionable, and Defendants' Motion will be granted.

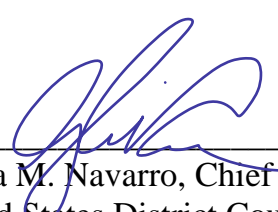
17 Upon finding that a plaintiff's claims are subject to an arbitration clause, the Court may  
18 dismiss an action without prejudice instead of staying the action while the arbitration proceeds.  
19 *Sparling v. Hoffman Const. Co.*, 864 F.2d 635, 638 (9th Cir. 1988); *Stewart v. Dollar Loan*  
20 *Ctr., LLC*, No. 2:13-cv-0182-JCM-PAL, 2013 WL 3491254, at \*4 (D. Nev. July 10, 2013). In  
21 this case, the Court finds that dismissal is warranted because all of Plaintiff's claims are subject  
22 to the arbitration policy.

#### 23 **IV. CONCLUSION**

24 **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss, (ECF No. 15), is  
25 **GRANTED.**

1           **IT IS FURTHER ORDERED** that the Complaint is dismissed without prejudice  
2 because Plaintiff must first comply with the terms of the relevant arbitration agreement. The  
3 Clerk is instructed to enter judgment accordingly and close the case.  
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5           **DATED** this 13 day of July, 2016.

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9 Gloria M. Navarro, Chief Judge  
10 United States District Court  
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